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IN THE

Supreme Court of the United States

1962

No. [redacted] 59

A. J. SIMLER, *Petitioner*,

v.

LESLIE L. CONNER, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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This Court has already decided the question which the Petitioner is presenting. Petitioner is attempting to ignore this Court's decision against it in *Conner* v. *Simler*, 367 U.S. 486, handed down on June 12, 1961. In its Mandate this Court directed the Court of Appeals for the Tenth Circuit to reconsider its holding that the present Petitioner was entitled to a jury trial "in the light of *Southard* v. *MacDonald*, 360 P. 2d 940." The Tenth Circuit acted strictly within the terms of this Mandate, applied *Southard* v. *MacDonald*, and ruled that this "action is purely equitable" in nature, and should be determined by the court without a jury."

This new petition is in reality a petition for rehearing. But no circumstance has intervened, as this Court's Rule 58 requires, since this Court's decision except the Tenth Circuit's reconsidgration in obedience to that decision. Nor has the present petitioner raised a substantial ground not previously presented. The same ground was urged at page 15 of the Respons to Petition for Rehearing filed in *Conner* v. *Simler*, *supra*.

Respondent respectfully requests this Court to deny the petition.

Respectfully submitted,

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